

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal and Civil Justice Appropriations Committee

BILL: PCS/SB 1726 (444324)

INTRODUCER: Criminal and Civil Justice Appropriations Committee

SUBJECT: Postadjudicatory Treatment-Based Drug Court Programs

DATE: March 27, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Sadberry	JA	Pre-meeting
2.			GO	
3.			WPSC	
4.			RC	
5.				
6.				

I. Summary:

This bill expands the potential use of postadjudicatory treatment-based drug court programs as a sentencing option for a limited, specified group of nonviolent felony defendants and offenders.

This bill could have a positive fiscal impact on the Department of Corrections resulting from fewer new commitments to state prison. Savings are estimated to be approximately \$11.8 million.

This bill substantially amends the following sections of the Florida Statutes: 397.334, 921.0026, 948.01, 948.06, and 948.20. The following sections of the Florida Statutes are amended to conform cross-references: 948.08, 948.16, and 948.345.

II. Present Situation:

Drug courts are designed to divert drug-addicted offenders from the criminal justice system and provide supervised community treatment services in lieu of incarceration. The programs receive local, state, and federal funds.

Section 397.334, Florida Statutes, authorizes the establishment of drug courts, and s. 948.08, Florida Statutes, mandates the type and severity of offenders that pretrial drug courts may serve. However, the statute does not address eligibility criteria for postadjudicatory drug courts.

Drug courts operate as special court dockets that hear cases involving drug addicted offenders. Judges order participating offenders to attend community treatment programs under close supervision by the court. The participant undergoes an intensive regimen of substance abuse

treatment, case management, drug testing, and monitoring. Although treatment is tailored to each offender's individual substance abuse treatment needs, drug court programs generally require at least one year of intensive individual and/or group substance abuse treatment.

Section 397.334, Florida Statutes sets forth the following strategy and principles for the operation of Florida's drug courts:

- (3) The treatment-based drug court programs shall include therapeutic jurisprudence principles and adhere to the following 10 key components, recognized by the Drug Courts Program Office of the Office of Justice Programs of the United States Department of Justice and adopted by the Florida Supreme Court Treatment-Based Drug Court Steering Committee:
 - (a) Drug court programs integrate alcohol and other drug treatment services with justice system case processing.
 - (b) Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
 - (c) Eligible participants are identified early and promptly placed in the drug court program.
 - (d) Drug court programs provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
 - (e) Abstinence is monitored by frequent testing for alcohol and other drugs.
 - (f) A coordinated strategy governs drug court program responses to participants' compliance.
 - (g) Ongoing judicial interaction with each drug court program participant is essential.
 - (h) Monitoring and evaluation measure the achievement of program goals and gauge program effectiveness.
 - (i) Continuing interdisciplinary education promotes effective drug court program planning, implementation, and operations.
 - (j) Forging partnerships among drug court programs, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

Drug courts generally use graduated sanctions when offenders violate program requirements by such actions as testing positive on drug tests, missing treatment sessions, or failing to report to court. These sanctions may include mandatory community service, extended probation, or jail time.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) recently completed a study of Florida's drug court programs and found that as of September 2008, post-adjudicatory drug courts operated in 26 counties in 11 judicial circuits and these programs admitted 1,694 offenders during calendar year 2007. (OPPAGA Report 09-13, March 2009, *State's Drug Courts Could Expand to Target Prison-bound Adult Offenders*)

Each drug court operates independently and is funded through a mixture of county funds, federal grants, client fees, and state funds provided through the Office of the State Courts Administrator, the Department of Corrections, and the Department of Children and Families. In Fiscal Year 2007-08, drug courts received approximately \$25 million in funding of which \$15 million was

local county funding. However, recent budget reductions to the Department of Corrections, the Department of Children and Families, and the Department of Juvenile Justice have resulted in reduced availability of treatment services to drug courts. *Id.*

In February 2009, the Office of the State Courts Administrator (OSCA) requested information on how local drug courts have been affected by recent budget reductions. Of the 14 circuits responding, 13 reported reductions in treatment services, resulting in fewer defendants served, or increased waiting lists and waiting time for treatment services, particularly residential treatment. In addition, 16 out of 37 case management positions funded through the Office of the State Courts Administrator were eliminated. Some circuits also reported reductions in drug screening and an increase in relapse and positive drug tests as a result. *Id.*

The OSCA study also indicates that many participants fail to graduate from the programs. Completion rates ranged from 39% to 74%. The national range is from 27% to 66% *Id.*

OPPAGA reported that based available data, Florida's post-adjudicatory drug courts appear to reduce prison admissions among offenders who successfully complete the program. OPPAGA analyzed prison admissions for a group of 674 offenders who graduated from post-adjudicatory drug courts in 2004 and compared their subsequent prison admissions to a similar group of 8,443 offenders who were sentenced to drug offender probation. Over a three- year period, offenders who successfully completed drug court were 80% less likely to go to prison than the matched comparison group. Forty-nine percent of those who did not graduate from the program were incarcerated during the three-year follow-up period. *Id.*

The OPPAGA report states that research indicates that both the programs' treatment and supervision components are significant factors in reducing prison admissions. Participants in drug court must comply with more demanding requirements than those offenders serving regular probation. In addition to reporting to court several times each month, drug court participants receive regular drug testing, individual and group substance abuse treatment and counseling, and are monitored by both a probation officer and drug court case manager. Most drug courts also provide ancillary services such as mental health treatment, trauma and family therapy, and job skills training to increase the probability of participants' success.

Some Florida drug courts have had success in targeting offenders who violate probation due to a positive drug test. OPPAGA reports that stakeholders indicate that there is a strong incentive for these offenders to participate in the postadjudicatory drug court programs. Other non-violent defendants and community supervision violators have been ruled out as potential participants in drug court programs due to their sentencing scores.

The Criminal Punishment Code ("Code") applies to defendants whose non-capital felony offenses were committed on or after October 1, 1998.¹ Each non-capital felony offense is assigned a level ranking that reflect its seriousness.² There are ten levels, and Level 10 is the

¹ s. 921.002, F.S.

² The level ranking is assigned either by specifically listing the offense in the appropriate level in the offense severity ranking chart of the Code, s. 921.0022, F.S., or, if unlisted, being assigned a level ranking pursuant to s. 921.0023, F.S., based on the felony degree of the offense.

most serious level.³ The primary offense, additional offenses and prior offenses are assigned level rankings.⁴ Points accrue based on the offense level. The higher the level, the greater the number of points. The primary offense accrues more points than an additional or prior offense of the same felony degree. Points may also accrue or be multiplied based on other factors such as victim injury, legal status, community sanctions, motor vehicle theft, etc.

The total sentence points scored is entered into a mathematical computation that determines the lowest permissible sentence. If the total sentence points equals or is less than 44 points, the lowest permissible sentence is a nonstate prison sanction, though the sentencing range is the minimum sanction up to the maximum penalty provided in s. 775.082, F.S. If the total sentence points exceeds 44 points, a prison sentence is the lowest permissible sentence, though the judge may sentence up to the maximum penalty provided in s. 775.082, F.S.⁵ Sentence length (in months) for the lowest permissible sentence is determined by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.

A sentence may be “mitigated,” which means that the length of a state prison sentence may be reduced or a nonprison sanction may be imposed even if the offender scored a prison sentence, if the court finds any permissible mitigating factor. Section 921.0026 contains a list of mitigating factors. This is called a “downward departure” sentence.

An offender cannot appeal a sentence within the permissible range (lowest permissible sentence to the maximum penalty), but can appeal an illegal sentence. The state attorney can appeal a downward departure sentence.

III. Effect of Proposed Changes:

This bill provides for additional sentencing options for a statutorily restricted population of defendants and community supervision offenders who might successfully, and safely, be diverted from the prison system into existing postadjudicatory drug court programs. The target population consists of nonviolent offenders who have a substance abuse or addiction problem that is amenable to treatment.

Entry into the postadjudicatory drug court program is also expanded to include offenders who violate their probation or community control solely due to a failed or suspect drug test.

Whether having violated community supervision or before the court for sentencing on a substantive law violation, the candidate for a postadjudicatory drug court program may not score more than 60 sentencing points, shall have no prior or current record of a violent felony, and must show by a drug screening and the court’s assessment that he or she is amenable to substance abuse or addiction treatment. The defendant or offender must agree to enter the program. The state attorney and victim, if any, must consent. Successful completion of the program is a condition of a probation or community control sentence.

³ s. 921.0022, F.S.

⁴ s. 921.0024, F.S. All information regarding the Code is from this statute, unless otherwise indicated.

⁵ If the sentence scored exceeds the maximum penalty in s. 775.082, F.S., the scored sentence is both the minimum sentence and the maximum penalty.

Under the provisions of the bill, the drug court assumes jurisdiction of the case until such time as the offender successfully completes the program, is terminated from the program, or until the sentence is completed.

The Code is amended by the bill insofar as the list of mitigating factors requires for consideration of the target population of offenders for postadjudicatory drug court programs.

In order to gather sufficient data to evaluate the effectiveness of the programs, the Office of the State Courts Administrator will collect annual reports from the various circuits. OPPAGA is directed by the bill to issue a report on the programs by October 1, 2010.

The bill becomes effective July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Staff of the Legislature's Economic and Demographic Research Division estimate that the bill could result in diverting as many as 160 inmates from prison in FY 2009-2010 for an estimated savings of \$11.8 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
